



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 10, 2022

IN THE MATTER OF:

Appeal Board No. 625057

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 30, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by PARENTS FOR MEGAN'S LAW IN prior to June 30, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 25, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a crime victim advocate for the employer's crime victim services agency for about 14 months until June 29, 2021. The employer's policy was to ensure that crime victims receive the services they need. In her role, the claimant was assigned to contact crime victims to explain available services and to help them through the process to obtain such services. The employer's policies and procedures provide that if a crime victim desires the available services, the advocate is required to

complete an intake form to obtain the information necessary to provide services and to open a case file to subsequently complete the process for available services. The claimant contacted all the victims assigned to her, explained the services available and completed intake forms and applications for all those requesting services; she did not complete an intake or open a file if the victim declined services. The claimant sometimes sent a blank application for services to a victim who declined services in case they changed their minds; to a victim who was skeptical of the process and wanted to see the required application first; or to obtain the victim's signature on the application as required. Many of the victims she was assigned to assist were victims of identity theft who declined services. Advocates are required to take extensive notes regarding the victims they speak with, whether a case is opened or not; and the claimant did this. These notes are reported in the employer's client management system. In addition, advocates are not allowed to close cases on their own; if a victim declines services, the case is discussed either with the agency's attorney or the executive director to obtain approval to close such case.

The employer routinely conducted quality assurance audits. During one such audit, the employer noticed that the claimant closed out 20 cases without completing intake forms and opening case files. The employer's attorney contacted these victims again and upon such further contact, seven of these victims indicated they wanted services but did not know what they were entitled to. Based on this audit, the employer believed that the claimant was not explaining the services available and was not completing intake forms and opening case files as required. The employer felt that the claimant required improvements in many areas of her work. In June 2021, the employer conducted a further audit of the claimant's work and found that the claimant had emailed blank applications to seven victims and provided no further explanation or assistance to these victims in her emails. On June 29, 2021, the employer discharged the claimant for sending applications to victims without explaining available services or assisting with the process and without completing intake forms and creating files for victims desiring services in violation of their known procedures.

OPINION: The credible evidence establishes that the employer discharged the claimant because they believed she routinely sent applications to victims without explaining available services or assisting with the process and without completing intake forms and creating files for victims desiring services in violation of their known procedures. We accept the claimant's

credible testimony that she completed intake forms and opened case files for all victims who desired services over the employer's hearsay evidence to the contrary. The employer's contention that the claimant lacks credibility because she first indicated that she never sent blank applications and later gave instances in which she did do so is not persuasive. The claimant did not testify that she never sent blank applications but testified that she did not simply send the blank application without explaining the available services to the claimant. In addition, the examples she gave of why a blank application might have been sent, such as for a signature, or when a victim was hesitant to provide the details over the telephone or to a victim who declined services in the event that they changed their minds later is reasonable. As the emails which the employer relies upon redacted the names of recipients for privacy purposes, there would be no way that the claimant could testify more definitively as to why a blank application may have been sent to them. Moreover, none of this testimony contradicts that she did not simply send a blank application without assisting a victim or completing intake forms for those who requested services.

Although the employer provided seven emails from the claimant which they contend were sent to victims who requested services and to whom the claimant, nevertheless, sent only the blank application with no further assistance or explanation in her email, we note that the emails fail to establish that these victims had, in fact, requested services or that the claimant did not explain the services available to the victims she contacted. The claimant's explanation that the emails do not explain the services and process to the victim because she had already explained same to each victim with whom she spoke is reasonable. The claimant's testimony that she was required to take extensive notes for each contact made, that cases that might be closed were discussed extensively with the employer's attorney or the executive director, and that these cases could not be closed without prior approval was uncontroverted by the employer. Moreover, the

testimony of both employer witnesses establishes that intake forms and case files were created for those victims who wanted services and that some victims who were contacted did not want the offered services. Consequently, for victims that did not want the services no intake form or case file would be created. Similarly, the employer's testimony regarding the results of the initial audit does not establish that the victims accepted services at the time the claimant contacted them. Under the circumstances, the evidence fails to establish that the claimant did not complete intakes and create case files

in violation of the employer's known policies. We further do not find the claimant's actions of sending of a blank application to those victims who did not want services at that time, to be a deliberate action in contravention of the employer's best interests or policies. Although the employer may have disapproved of how the claimant completed her work, and certainly could discharge the claimant for any lawful reason, the evidence fails to establish that the claimant's conduct constituted disqualifying misconduct for Unemployment Insurance purposes.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 30, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to June 30, 2021, cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER